IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 385 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

VASTAJI HAJURJI THAKORE

Appearance:

MR RV DESAI, AGP for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 02/05/2001

ORAL JUDGEMENT

#. Respondent is served. None appears on his behalf, nor any advocate has been engaged nor any counter affidavit has been filed. As such, Shri RV Desai, learned AGP has been heard on admission, as well as, on

final disposal of this petition. In the absence of the respondent, the petition can be finally disposed of at the admission stage.

#. The brief facts are that the respondent was employed as Daily Wager Watchman in the Forest Expansion Range, Patan. The grievance of the respondent was that he was illegally terminated from services, whereas, the stand of the petitioner was that the respondent had left the job on his own accord. The matter was taken before the Labour Court, Kalol. The Labour Court, Kalol, in its award dated 12-1-2000 Annexure-'A' to the petition directed the petitioner to reinstate the respondent and to pay backwages with effect from 22-2-1996. It is this award which is under challenge.

#. Shri RV Desai, learned AGP has contended that the Forest Department is not an industry, hence, the provisions of Industrial Disputes Act are not attracted. This plea was taken before the Labour Court, but it was not answered. Another contention has been that it is not a case of termination of service of employee respondent, rather the respondent had left the employment on his own accord. Another contention is that the respondent did not compete 240 days, hence also, he was not entitled to any relief.

#. In the course of argument, Shri Desai pressed only one point that the Forest Department is not an industry, hence, the Industrial Disputes Act is not applicable. He has placed reliance upon the judgment of the Supreme Court in Civil Appeal No.1684/1998 decided on 31-1-2001 between the STATE OF GUJARAT & ORS. v. P.N.PARMAR. In this case, the Apex Court found that the Forest Department is not an industry. It was further held by the Apex Court that there was no such plea raised by the employee that he was employed in an industry and the Forest Department is an industry. The Supreme Court further observed that, if a dispute arises as to whether a particular establishment or part of it, wherein an appointment has been made, is an industry or not, would be for the person concerned who claims the same to be an industry to give positive facts for coming to the conclusion that it constitutes an industry. Ordinarily, a department of the Government can not be held to be an industry and rather it is a part of sovereign function. With these observations, the Apex Court had set aside the judgment of the learned single Judge of this Court, as well as, judgment of the Division Bench of this Court confirming the judgment of the learned single Judge giving relief to the employee.

#. In view of this judgment of the Apex Court, it has to be held that the Forest Department is not an industry, and as such, the impugned award is illegal and without jurisdiction. Unless the petitioner could be held to be an industry, the dispute raised by the respondent could not be classified as industrial dispute and as such, the award is without jurisdiction and is the result of non-application of mind of the plea raised by the petitioner.

#. In the result, the petition succeeds and is hereby allowed. The impugned award Annexure-'A' is hereby quashed and set aside.

#. This Court, on 17-1-2001, directed the petitioner to deposit Rs.2,000=00 as cost so that the same may be given to the other side. However, since the petition succeeds, this deposit can not be given to the respondent. On the other hand, this deposit shall be refunded to the petitioner. No order as to cost of this petition.

May 2, 2001. [D.C. Srivastava, J.]

/sakkaf